

**COURT OF APPEALS
DECISION
DATED AND FILED**

MARCH 10, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-1780-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN RE THE MARRIAGE OF:

VICKI L. THOMAS,

PETITIONER-APPELLANT,

v.

FREDERICK W. THOMAS,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
JEFFREY A. WAGNER, Judge. *Reversed and cause remanded.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Vicki L. Thomas appeals from an order of the circuit court dismissing her motion for review of an assistant family court commissioner's decision addressing issues of child support and insurance coverage. The trial court dismissed her motion for review, concluding that her

untimely service of the motion on her former husband, Frederick Thomas, and her failure to attach a current financial disclosure statement to the motion deprived the circuit court of jurisdiction. Because neither the timing of Vicki's service of her motion on Frederick nor her failure to attach a current financial disclosure statement to her motion deprived the trial court of jurisdiction over her motion for review, we reverse the trial court's order and remand for further proceedings.¹

The dispositive facts are undisputed. The parties were divorced in 1992. Pursuant to the judgment of divorce, Frederick was ordered to pay 25% of his gross income as child support for the parties' two children. The judgment also directed Frederick to provide healthcare insurance for the children, with Vicki to bear the first \$100 per year of uncovered healthcare expense and the parties to split the remaining uncovered expenses equally. Sometime after the judgment was entered, Frederick left his employer, a commercial insurance agency, and started his own agency. His annual income fell from \$50,000 at the time of his divorce to \$24,000 in 1994. In response to this change in circumstances, Vicki brought a post-judgment motion regarding child support and certain other issues. Frederick filed a cross-motion, seeking to shift the responsibility for providing healthcare insurance for the children to Vicki.

The Assistant Family Court Commissioner issued an order on July 10, 1996, finding that Frederick's severance pay and certain attorney fee payments were income subject to the 25% child support assessment. The commissioner ruled in Frederick's favor on the remaining motions. On July 22, 1996, Vicki filed a motion for *de novo* review in the circuit court. Vicki's motion

¹ This is an expedited appeal under RULE 809.17, STATS.

did not include a financial disclosure statement. A file-stamped copy of her motion showing a hearing date of September 6, 1996, was faxed to Frederick's counsel's office on July 23, 1996. Frederick filed a motion for *de novo* review with the circuit court on July 25, 1996. Both parties then filed cross motions to dismiss. Frederick's motion to dismiss alleged that Vicki's service of her motion on him and her failure to include a financial disclosure statement violated local court rules. The trial court granted Frederick's motion. Vicki contends on appeal that her service of the motion for review was not late under local court rules, that local court rules did not mandate the submission of a current financial disclosure statement with her motion, and that the trial court erred in concluding that her alleged violations of local court rules deprived the trial court of subject matter jurisdiction.

The application of local rules to circuit court cases falls within the wide discretion of the circuit court. *See Kotecki & Radtke, S.C. v. Johnson*, 192 Wis.2d 429, 447, 531 N.W.2d 606, 613 (Ct. App. 1995). Accordingly, an appellate court will only reverse a trial court's decision to sanction a party for violating a local rule if the trial court erroneously exercised its discretion. *See id.* at 448, 531 N.W.2d at 613. "To properly exercise its discretion, the trial court's decision must be 'consistent with the facts of record and established legal principles.'" *Id.* (citation omitted). A trial court's misapplication or erroneous view of the law is a misuse of judicial discretion. *See State v. Hutnik*, 39 Wis.2d 754, 763, 159 N.W.2d 733, 737 (1968).

LOCAL RULE 524 governs the review of family court commissioners' decisions and orders:

524. REVIEW OF FAMILY COURT COMMISSIONER DECISIONS, ORDERS AND RULINGS

- (a) Either party or guardian ad litem has the right to move for review of any decision, order, or ruling of any court commissioner, with notice to the opposing party and guardian ad litem, provided that said motion is filed with the assigned judge within 12 days of the date the written decision was signed. All decisions, orders, and rulings of court commissioners assigned to this division shall be prepared, dated and signed within five days of the hearing date.
- (b) The motion for review shall include:
 -
 - (3) A current financial disclosure statement. [Not necessary in cases not involving money or where no new hearing is requested.]
- (c) The parties shall exchange any necessary financial information not less than five days before the hearing on the review, unless such information has already been exchanged. Sanctions may be imposed by the Court for non-compliance.

LOCAL RULE 524 does not establish a specific time limit by which the moving party must give notice of his or her motion to the other party. Accordingly, the general rule that notice given must be reasonable applies. *See Bachowski v. Salamone*, 139 Wis.2d 397, 405, 407 N.W.2d 533, 536 (1987). Reasonable notice is that notice calculated to inform the party of proceedings and to afford the party an opportunity to object and defend his or her rights. *See id.*

We conclude that the trial court misused its discretion when it determined that LOCAL RULE 524 established a deadline for the service of notice of a motion for review. The trial court misused its discretion further when it failed

to consider the legal principle of reasonable notice in determining whether Vicki's notice was timely given.

Vicki's service upon Frederick provided him with forty-five days notice of the scheduled hearing, ample time for Frederick to prepare for the trial court's hearing on Vicki's motion. Applying the principle of reasonable notice to these undisputed facts, we conclude as a matter of law that the notice Vicki gave to Frederick was reasonable and thus timely.²

LOCAL RULE 524 plainly requires the filing of a current financial disclosure statement with a motion for review "involving money." Vicki's motion sought review of an order of the commissioner, an order centered on changing the financial conditions and responsibilities of the parties. Because this motion was one "involving money," the trial court properly concluded that Vicki violated LOCAL RULE 524 by not including a current financial disclosure statement.

Finally, LOCAL RULE 524 provides that non-compliance may result in the imposition of sanctions. However, LOCAL RULE 524 does not predicate the trial court's jurisdiction over a motion for review on a party's compliance with the rule's terms. Accordingly, the trial court's legal conclusion that Vicki's non-compliance with the rule deprived the court of subject matter jurisdiction over her motion resulted from the trial court's erroneous view of LOCAL RULE 524 and was

² Frederick contends that the timing of the service upon him of Vicki's motion for review was not reasonable because it did not afford him the opportunity to file his own motion for review in a timely fashion. This argument lacks merit. Requiring service that permits a reasonable opportunity to respond and prepare for hearing on the motion served is not the same thing as requiring service calculated to permit the opposing party the opportunity to determine whether to pursue an independent request for relief from the trial court. While the decision to file a motion for review might influence the decision of the opposing party, the law does not make such notice a condition precedent to the opposing party's decision to seek such relief.

a misuse of discretion. Accordingly, we hold that the trial court's order must be reversed and the cause remanded for further proceedings consistent with this opinion.

By the Court.—Order reversed and cause remanded.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

